Kumpulan Jerai Sdn Bhd, Rengam v National Union of Plantation Workers & Anor

HIGH COURT (KUALA LUMPUR) — ORIGINATING SUMMONS NO R2–25–90–93
LOW HOP BING J
15 AUGUST 1995

Labour Law *— Employment — Reference of dispute over dismissal to Industrial Court by Minister — Minister did not refer issue pertaining to downgrading — Whether Industrial Court has jurisdiction to adjudicate upon issue not referred by Minister*

Labour Law *— Employment — Reinstatement — Industrial Court reinstated workers as tappers when at the time of dismissal they were general workers — whether Industrial Court committed jurisdictional error*

Labour Law *— Employment — Downgrading — Workers issued notices of domestic inquiry into charges of alleged misconduct — Workers found guilty of inciting and instigating others from going to work — Dispute over downgrading — Workers stayed away from work pending resolution of dispute — Whether pursuit of grievance entitled them to stay away from work*

Labour Law *— Employment — Downgrading — Workers issued notices of domestic inquiry into charges of alleged misconduct — Workers found guilty of inciting and instigating others from going to work — Dispute over downgrading — Failed to abide by redressal procedure — Failure of Industrial Court to take into account failure to abide — Whether Industrial Court committed jurisdictional error or error of law*

Labour Law *— Employment — Termination of employment — Dismissal — Absence from work — Failure of workers to report for work on downgraded position — Workers continued to stay away from work without permission despite warnings — Whether employer entitled to treat contract of employment as terminated — Whether required to conduct inquiry — Employment Act 1955 s 15(2)*

Labour Law *— Employment —Termination of employment — Dismissal — Domestic inquiry — The phrase 'delinquent workmen' used in findings and recommendations of inquiry panel — Whether inquiry panel prejudiced and biased*

Labour Law *— Employment — Termination of employment — Dismissal — Absence from work — Whether applicant waived or condoned workers' absence*

The applicant was a member company of the Malayan Agricultural Producers Association ('MAPA'). By letters dated 15 September 1988, four workers ('the workers') employed by the applicant were individually issued identical notices of a domestic inquiry wherein they were subsequently found guilty of inciting and instigating other workers from going to work. By letters dated 29 September 1988, the workers were individually informed, inter alia: (i) they were downgraded from tappers to general workers with effect from 30 September 1988; (ii) they were to report for work on 1 October 1988; and (iii) they could appeal against the downgrading decision in accordance with the redressal procedure as provided for in Award

No 111/86. By letters dated 30 September and 1 October 1988 respectively, the workers jointly applied for leave until resolution of the dispute over the downgrading by a union committee. The applicant rejected these applications. None of the workers reported for work on 1 October 1988 as required. By letters dated 7 October 1988, the applicant issued a letter of warning, putting them on notice that, inter alia, they were to report for work on 8 October 1988 and that failure to do so would be considered the workers had abandoned their employment. Upon receipt of the applicant's letters, the workers again jointly applied for leave from 7 October 1988. This was rejected by the applicant on 8 October 1988. The workers were again individually warned that if they failed to report for work on 8 October 1988 without prior permission, the applicant would treat them as having breached their contracts of service. The workers did not report for work on 8 October 1988 or at any time thereafter. On 16 October 1988, the applicant terminated their employment with immediate effect due to such continued absence and pursuant to s 15(2) of the Employment Act 1955. The dispute over the dismissal ('the dismissal issue') was referred to the Industrial Court for adjudication by the Minister pursuant to s 26(2) of the Industrial Relations Act 1967. However, the Minister did not refer the issue pertaining to the downgrading of the workers from tappers to general workers with effect from 1 October 1988 ('the downgrading issue'). The Industrial Court handed down the decision ('the impugned award') to the effect that the workers be reinstated forthwith as tappers from the date of dismissal and be paid their backwages and other entitlements. The applicant contended that the Industrial Court had committed a number of jurisdictional errors or errors of law which may be summarized as follows: (i) the Industrial Court went into issues which were not the subject matter of the Minister's reference; (ii) erroneous attribution of bias and prejudice to the inquiry panel; (iii) erroneous finding that the applicant had waived or condoned the workers' absence; (iv) erroneous conclusion that the applicant could not invoke s 15(2) of the Employment Act 1955; and (v) erroneous reinstatement of the workers as tappers. The applicant applied for certiorari to quash the impugned award.

Held, allowing the application:

(1) As the Minister's reference only related to the dismissal of the four workers, the Industrial Court did not have jurisdiction to adjudicate upon the issue of downgrading. By handing down the impugned award, the Industrial Court committed a jurisdictional error and an error of law which rendered its decision a nullity (see pp 231F–233I); *Precision Bearings India Ltd v Baroda Mazdoor Sabha* (1978) Lab IC 515, *Pottery Mazdoor Panchayat v Perfect Pottery Co Ltd* (1979) 2 SCJ 481, *All Malayan Estates Staff Union v Sungai Berenang Syndicate Bhd Negeri Sembilan (Award No 151 of 1980)* [1980] MLLR 337, *SOCFIN Co Bhd (Minyak Estate,*

A *Batang Berjuntai) v National Union Of Plantation Workers (Award No 226/86)* [1986] 2 ILR 1020, *All Malayan Estates Staff Union v Golden Hope Plantation Bhd & Anor* [1994] 2 MLJ 699 and *Pan Global Textile Bhd, Penang v Ang Beng Teik* [1994] 3 MLJ 808 followed.

B (2) The phrase 'delinquent workmen' was only used in the findings and recommendations of the inquiry panel and not prior to that. The conclusion of the Industrial Court that the inquiry panel was prejudiced and biased before and throughout the inquiry was not based on any evidence, was perverse and so devoid of plausible justification in that no reasonable body of persons C could have reached it (see p 234D–I); *Malayan Banking Bhd v Association Of Bank Officers, Peninsular Malaysia & Anor* [1988] 3 MLJ 204 and *Petroleum National Bhd v Mohd Radzuan bin Ramli (Award No 47/1993)* [1993] 1 ILR 100 followed.

(3) The manager of the applicant did not testify that he had waived D the workers' absence from 29 September to 15 October 1988 as suggested by the Industrial Court. The Industrial Court further failed to take into account the applicant's letter to the workers dated 7 October 1988 and its rejection of their application for leave vide its letter dated 8 October 1988. The evidence before the court is that, if at all there was waiver or condonation, the E applicant had only waived or condoned their absence from 1 October 1988 to 7 October 1988. There was no evidence, oral or documentary, before the Industrial Court that their absence during this period was waived or condoned. As the Industrial Court has based its decision on no evidence, its decision was F clearly perverse. Failure to take into account the applicant's letters dated 7 October 1988 and 8 October 1988 also is an error of jurisdiction amounting to an error of law which rendered its decision a nullity (see pp 235I–236E); *Malayan Banking Bhd v Association of Bank Officers, Peninsular Malaysia & Anor.*

G (4) The workers' pursuit of grievance on their downgrading did not entitle them in law to stay away from work. They had failed to abide by art 61 of Award No 111/86 which set out clearly the redressal procedure to invoke any grievance against the applicant. The Industrial Court's failure to take this into account amounted to a jurisdictional error and an error of law (see pp 236H–237F); H *Kesatuan Pekerja-Pekerja Perusahaan Logam v KL George Kent (M) Bhd* [1991] 1 MLJ 230 and *Ex Parte Fry* [1954] 1 WLR 730 followed.

(5) The applicant was entitled to rely on s 15(2) of the Employment Act 1955 to treat the workers' services as having been terminated I as they were continuously absent from work without permission from 8 October 1988 to 15 October 1988 (see pp 237G–238B); *Sykt Sistem Penerbangan Malaysia Bhd v Harbanas Singh a/l S Natha Singh (Award No 514 of 1994)* and *Malaysian Airline*

System (MAS) v Nahaza Ahmad bte Abdul Salam (Award No 427 of 1994) followed. A

(6) Although the workers were actually given a right to be heard in a domestic inquiry, there was no requirement to conduct such an inquiry in a termination of service under s 15(2) of the Employment Act 1955 as they were deemed to have broken their B contracts of employment (see p 238C–D); *Sykt Precico Sdn Bhd, Seberang Perai v Shanmugavalli Ramadas, Seberang Perai (Award No 145 of 1989)* [1989] 1 ILR 252 and *LRC (Malaysia) Sdn Bhd v Navamani a/p Selliah (Award No 170 of 1992)* [1992] 1 ILR 494 followed.

(7) The ordinary, popular and natural meaning of the word 'reinstate' C is 'to replace the workers to the position from which they were dismissed and to restore the status quo ante the dismissal.' By reinstating the four workers as tappers when at the time of dismissal they were general workers, the Industrial Court committed a serious jurisdictional error (see p 238F–I); *Kempas* D *(Malaya) Bhd v R Kandasamy* [1982] 2 CLJ 425; *Jackson v Fisher's Foils Ltd* [1944] 1 KB 316 and *Sykt Kenderaan Melayu Kelantan Bhd v Transport Workers' Union* [1995] 2 MLJ 317 followed.

[Bahasa Malaysia summary E

Pemohon merupakan sebuah ahli syarikat Persatuan Pengeluar-Pengeluar Pertanian Tanah Melayu. Menerusi surat bertarikh 15 September 1988, empat orang pekerja ('pekerja-pekerja') yang digaji oleh pemohon telah diberi notis yang serupa secara perseorangan tentang siasatan domestik dalam mana pekerja-pekerja kemudiannya F telah didapati bersalah kerana menghasut pekerja-pekerja yang lain supaya tidak bekerja. Menerusi surat-surat bertarikh 29 September 1988, pekerja-pekerja diberitahu, antara lain: (i) mereka diturunkan taraf daripada penoreh getah kepada pekerja am bermula daripada 30 September 1988; (ii) mereka hendaklah melaporkan diri untuk G bekerja pada 1 October 1988; dan (iii) mereka boleh membuat rayuan terhadap keputusan penurunan taraf mengikut prosedur tebusrugi seperti yang diperuntukan dalam Award No 111/86. Melalui surat-surat bertarikh 30 September dan 1 Oktober 1988 masing-masing, pekerja-pekerja bersama-sama memohon cuti sehingga penyelesaian pertikaian atas penurunan taraf tersebut oleh sebuah H jawatankuasa persatuan. Pemohon telah menolak permohonan-permohonan tersebut. Tidak ada seorang pun dari pekerja-pekerja melaporkan diri pada 1 Oktober 1988 seperti yang dikehendaki. Melalui surat-surat bertarikh 7 Oktober 1988, pemohon telah mengeluarkan sepucuk surat amaran, yang memberitahu pekerja-I pekerja bahawa, antara lain, mereka dikehendaki melaporkan diri pada 8 Oktober 1988 dan kegagalan berbuat demikian akan dianggap mereka telah meninggalkan pekerjaan mereka. Setelah menerima surat pemohon, pekerja-pekerja sekali lagi memohon cuti bermula daripada 7 Oktober 1988. Permohonan ini ditolak oleh pemohon pada 8 Oktober 1988. Pekerja-pekerja sekali lagi diberi amaran bahawa

jika mereka gagal melaporkan diri pada 8 Oktober 1988 tanpa kebenaran, pemohon akan menganggap mereka sebagai telah melanggar kontrak perkhidmatan. Pekerja-pekerja tidak melaporkan diri pada 8 Oktober 1988 atau pada bila-bila masa selepas itu. Pada 16 Oktober 1988, pemohon telah memberhentikan perkhidmatan pekerja-pekerja dengan serta-merta akibat ketidakhadiran yang berturut-turut dan mengikut s 15(2) Akta Pekerjaan 1955. Pertikaian tentang pemecatan tersebut ('isu pemecatan') dirujuk kepada Mahkamah Perusahaan untuk penghukuman oleh Menteri menurut s 26(2) Akta Perhubungan Perindustrian 1967. Walau bagaimanapun, Menteri tidak merujuk isu penurunan taraf pekerja-pekerja daripada penoreh getah kepada pekerja am bermula daripada 1 Oktober 1988 ('isu penurunan taraf'). Mahkamah Perusahaan memberikan keputusan ('award yang dipersoalkan') bahawa pekerja-pekerja dikembalikan taraf mereka dengan serta-merta sebagai penoreh getah dari tarikh pemecatan dan dibayar gaji tertunggak dan hak-hak yang lain. Pemohon berhujah bahawa Mahkamah Perusahaan telah melakukan beberapa kesilapan bidang kuasa atau kesilapan undang-undang yang boleh diringkaskan sebagai berikut: (i) Mahkamah Perusahaan menyentuh isu yang bukan merupakan perkara subjek yang dirujuk oleh Menteri; (ii) kesilapan penyifatan berat sebelah dan prasangka kepada panel siasatan; (iii) kesilapan penemuan bahawa pemohon telah mengenepikan atau memaafkan ketidakhadiran pekerja-pekerja; (iv) kesilapan kesimpulan bahawa pemohon tidak boleh menggunakan s 15(2) Akta Pekerjaan 1955; dan (v) kesilapan pengembalian kedudukan taraf pekerja-pekerja sebagai penoreh getah. Pemohon memohon certiorari untuk membatalkan award yang dipersoalkan.

Diputuskan, membenarkan permohonan:

(1) Oleh kerana rujukan Menteri hanya berkaitan dengan pemecatan pekerja-pekerja, Mahkamah Perusahaan tidak mempunyai bidang kuasa untuk menghukum atas isu penurunan taraf. Dalam memberikan award yang dipersoalkan, Mahkamah Perusahaan telah melakukan kesilapan bidang kuasa dan kesilapan undang-undang yang menyebabkan keputusan tersebut satu pembatalan (lihat ms 231F–233I); *Precision Bearings India Ltd v Baroda Mazdoor Sabha* (1978) Lab IC 515, *Pottery Mazdoor Panchayat v Perfect Pottery Co Ltd* (1979) 2 SCJ 481, *All Malayan Estates Staff Union v Sungai Berenang Syndicate Bhd Negeri Sembilan (Award No 151 of 1980)* [1980] MLLR 337, *SOCFIN Co Bhd (Minyak Estate, Batang Berjuntai) v National Union of Plantation Workers (Award No 226/86)* [1986] 2 ILR 1020, *All Malayan Estates Staff Union v Golden Hope Plantation Bhd & Anor* [1994] 2 MLJ 699 dan *Pan Global Textile Bhd, Penang v Ang Beng Teik* [1994] 3 MLJ 808 diikut.

(2) Ungkapan 'pekerja buruh delinkuen' hanya digunakan dalam pendapat dan syor panel siasatan dan bukan sebelum itu. Kesimpulan Mahkamah Perusahaan bahawa panel siasatan berprasangka dan bersikap berat sebelah sebelum dan semasa

siasatan tersebut tidak berasaskan sebarang bukti, adalah terpesong dan begitu kekurangan justifikasi hinggakan tiada orang atau badan yang munasabah dapat mencapai keputusan sedemikian (lihat ms 234D–I); *Malayan Banking Bhd v Association Of Bank Officers, Peninsular Malaysia & Anor* [1988] 3 MLJ 204 dan *Petroleum National Bhd v Mohd Radzuan bin Ramli (Award No 47/1993)* [1993] 1 ILR 100 diikut.

(3) Pengurus pemohon tidak memberi keterangan bahawa dia telah mengenepikan ketidakhadiran pekerja-pekerja dari 29 September 1988 hingga 15 Oktober 1988 seperti mana yang dicadangkan oleh Mahkamah Perusahaan. Mahkamah Perusahaan selanjutnya gagal untuk mengambil kira surat-surat pemohon kepada pekerja-pekerja bertarikh 7 Oktober 1988 dan penolakan permohonan cuti melalui surat bertarikh 8 Oktober 1988. Keterangan di hadapan mahkamah ialah, sekiranya adanya penepian atau pemaafan, pemohon hanya mengenepikan atau memaafkan ketidakhadiran mereka dari 1 Oktober 1988 hingga 7 Oktober 1988. Tidak ada bukti, lisan atau dokumentari, di hadapan Mahkamah Perusahaan bahawa ketidakhadiran mereka semasa tempoh ini telah diketepikan atau dimaafkan. Oleh kerana keputusan Mahkamah Perusahaan tidak berasaskan keterangan, ia adalah terpesong. Kegagalan untuk mengambil kira surat-surat pemohon bertarikh 7 Oktober 1988 dan 8 Oktober 1988 juga merupakan suatu kesilapan bidang kuasa menyerupai kesilapan undang-undang, menyebabkan keputusan tersebut suatu pembatalan (lihat ms 235I–236E); *Malayan Banking Bhd v Association Of Bank Officers, Peninsular Malaysia & Anor* [1988] 3 MLJ 204 diikut.

(4) Tuntutan kilanan pekerja-pekerja atas penurunan taraf mereka tidak memberi hak kepada mereka berhak dari segi undang-undang untuk menjauhi diri dari kerja. Mereka telah gagal mematuhi perkara 61 Award No 111/86 yang menyatakan dengan jelas prosedur menebus rugi dalam tindakan menujukan kilanan mereka terhadap pemohon. Kegagalan Mahkamah Perusahaan untuk mengambil kira merupakan satu kesilapan bidang kuasa dan kesilapan undang-undang (lihat ms 236H–237F); *Kesatuan Pekerja-Pekerja Perusahaan Logam v KL George Kent (M) Bhd* [1991] 1 MLJ 230 dan *Ex Parte Fry* [1954] 1 WLR 730 diikut.

(5) Pemohon berhak bergantung kepada s 15(2) Akta Pekerjaan 1955 untuk menganggap perkhidmatan penentang-penentang telah pun diberhentikan akibat ketidakhadiran mereka yang berturut-turut tanpa kebenaran dari 8 Oktober 1988 hingga 15 Oktober 1988 (lihat ms 237G–238B); *Sykt Sistem Penerbangan Malaysia Bhd v Harbanas Singh a/l S Natha Singh (Award No 514 of 1994)* dan *Malaysian Airline System (MAS) v Nahaza Ahmad bte Abdul Salam (Award No 427 of 1994)* diikut.

(6) Walaupun pekerja-pekerja telah diberi hak untuk didengar dalam siasatan domestik, tiada keperluan untuk mengadakan siasatan begini dalam suatu pemberhentian perkhidmatan di bawah s

15(2) Akta Pekerjaan 1955 kerana mereka dianggap telah memungkir kontrak pekerjaan mereka (lihat ms 238C–D); *Sykt Precico Sdn Bhd, Seberang Perai v Shanmugavalli Ramadas, Seberang Perai (Award No 145 of 1989)* [1989] 1 ILR 252 dan *LRC (Malaysia) Sdn Bhd v Navamani a/p Selliah (Award No 170 of 1992)* [1992] 1 ILR 494 diikut.

(7) Makna yang biasa diberikan kepada 'mengembalikan semula' ialah 'untuk meletakkan semula pekerja-pekerja ke jawatan daripada mana mereka dipecat dan untuk mengekalkan status quo sebelum pemecatan'. Dengan mengembalikan semula kedudukan taraf pekerja-pekerja sebagai penoreh getah apabila pada masa pemecatan mereka adalah pekerja am, Mahkamah Perusahaan telah melakukan suatu kesilapan bidang kuasa yang serius (lihat ms 238F–I); *Kempas (Malaya) Bhd v R Kandasamy* [1982] 2 CLJ 425, *Jackson v Fisher's Foils Ltd* [1944] 1 KB 316 dan *Sykt Kenderaan Melayu Kelantan Bhd v Transport Workers' Union* [1995] 2 MLJ 317 diikut.

Notes

For cases on termination of employment, see 8 *Mallal's Digest* (4th Ed, 1996 Reissue) paras 790–835.

For a case on reinstatement, see 8 *Mallal's Digest* (4th Ed, 1996 Reissue) para 743.

Cases referred to

All Malayan Estates Staff Union v Golden Hope Plantation Bhd & Anor [1994] 2 MLJ 699

All Malayan Estates Staff Union v Sungai Berenang Syndicate Berhad Negeri Sembilan (Award No 151 of 1980) [1980] MLLR 337

Fry, ex parte [1954] 1 WLR 730

Jackson v Fisher's Foils Ltd [1944] 1 KB 316

Kempas (Malaya) Bhd v R Kandasamy [1982] 2 CLJ 425

Kesatuan Pekerja-Pekerja Perusahaan Logam v KL George Kent (M) Bhd [1991] 1 MLJ 230

LRC (Malaysia) Sdn Bhd v Navamani a/p Selliah (Award No 170 of 1992) [1992] 1 ILR 494

Malaysian Airline System (MAS) v Nahaza Ahmad bte Abdul Salam (Award No 427 of 1994)

Malayan Banking Bhd v Association Of Bank Officers, Peninsular Malaysia & Anor [1988] 3 MLJ 204

Pan Global Textile Bhd, Penang v Ang Beng Teik [1994] 3 MLJ 808

Persatuan Pengeluar-Pengeluar Pertanian Tanah Melayu v Kesatuan Kebangsaan Pekerja-Pekerja Ladang (1986) ILR 586

Petroleum National Bhd v Mohd Radzuan bin Ramli (Award No 47/1993) [1993] 1 ILR 100

Pottery Mazdoor Panchayat v Perfect Pottery Co Ltd (1979) 2 SCJ 481

Precision Bearings India Ltd v Baroda Mazdoor Sabha (1978) Lab IC 515

SOCFIN Co Bhd (Minyak Estate, Batang Berjuntai) v National Union of Plantation Workers (Award No 226/86) [1986] 2 ILR 1020
Sykt Kenderaan Melayu Kelantan Bhd v Transport Workers' Union [1995] 2 MLJ 317
Sykt Precico Sdn Bhd, Seberang Perai v Shanmugavalli Ramadas, Seberang Perai (Award No 145 of 1989) [1989] 1 ILR 252
Sykt Sistem Penerbangan Malaysia Bhd v Harbanas Singh a/l S Natha Singh (Award No 514 of 1994)

Legislation referred to

Employment Act 1955 ss 14(1), 15(2)
Industrial Relations Act 1967 ss 2, 17, 26(2), 33A(1)

P Jayasingam (*Shearn Delamore & Co*) for the applicant.
B Lobo (*Lobo & Associates*) for the first respondent.

Cur Adv Vult

Low Hop Bing J:

Application

This application in encl 6 prays for an order of certiorari to remove into this court, for the purposes of it being quashed, the whole of the decision in Industrial Court Case No 2/3–591/88, Award No 180 of 1993 dated 17 June 1993 ('the impugned award').

Facts and Chronology of Events

The applicant is a member company of the Malayan Agricultural Producers Association ('MAPA') and the first respondent in Industrial Court Award No 111/86 in *Persatuan Pengeluar-Pengeluar Pertanian Tanah Melayu v Kesatuan Kebangsaan Pekerja-Pekerja Ladang* (1986) ILR 586 (Award No 111/86).

Following acts of alleged misconduct, four workers employed by the applicant, namely, Ali bin Gula Mohamad, Athinaidu s/o Appalasamy, Kamin bin Nasimin and Mohamed bin A Bakar ('the four workers') were by letters dated 15 September 1988, individually issued identical notices of domestic inquiry in respect of the charges contained therein. They were also suspended from work with immediate effect pending the outcome of investigations and the inquiry.

The domestic inquiry was held on 20, 21, 22 and 23 September 1988. After due inquiry, the four workers were found guilty of having incited and instigated workers of Ladang Simpang Rengam on 13 September 1988 from going to work on 14 September 1988. The four workers were recommended to be downgraded from tappers to general workers.

A By letters dated 29 September 1988, the four workers were individually informed that:

(i) they had been found guilty of misconduct;

(ii) by way of punishment, they were downgraded to general workers with effect from 30 September 1988;

B (iii) they were to report for work on 1 October 1988; and

(iv) they could appeal against the downgrading decision in accordance with the redressal procedure as provided for in Award No 111/86.

By a letter dated 29 September 1988, the four workers jointly informed the C applicant that they were not satisfied with the applicant's decision to downgrade them and requested to meet the applicant on 30 September 1988 at 3.30pm to resolve the matter. The applicant only received this letter on 1 October 1988. The applicant immediately informed each of the four workers that the meeting they had requested for would take place on 3 October 1988 at 3.30pm.

D The meeting scheduled on 3 October 1988 did not proceed as none of the four workers turned up.

By a letter dated 30 September 1988, the four workers jointly applied for leave until resolution of the dispute over the downgrading by the Kluang (Branch) Union Committee.

E By letter dated 1 October 1988, the applicant immediately informed the four workers individually that their leave application was not approved for failure to comply with the prescribed procedure for annual leave.

None of the four workers reported for work on 1 October 1988 as required.

F Subsequently, the four workers also individually submitted leave application forms, dated 1 October 1988 respectively for three days' leave commencing from 1 October 1988 to 3 October 1988. The applicant only received these leave application forms on 1 October 1988 at 4.35pm. The four workers were individually informed that their applications were also G not approved, when their applications were marked 'NOT approved' on the said forms. The four workers did not report for work as required on 2, 3, 4, 5 or 6 October 1988.

In the light of the above, by letters dated 7 October 1988, the applicant wrote to each of the four workers putting them on notice that:

H (i) their absence from work without prior permission after being informed of the rejection of their leave application amounted to serious misconduct for which disciplinary action could be taken;

(ii) they were reminded to report for work on 8 October 1988; and

(iii) they were warned that if they repeated their failure to report for work I again, the applicant would consider that they were no longer interested in continuing with their employment and that they would be considered to have abandoned their employment; and

(iv) they had to take up their grievance in accordance with Award No 111/86. A

Upon receipt of the applicant's above letters, the four workers again jointly applied for leave from 7 October 1988 to such time as their case was resolved by the Kluang (Branch) Union Committee. This second application for leave was rejected by the applicant on 8 October 1988. The four B workers were again individually warned that if they failed to report for work on 8 October 1988 without prior permission, the applicant would treat them as having breached their contracts of service. The applicant gave the four workers a second chance to report for work. The four workers did not report for work on 8 October 1988 or at any time C thereafter.

In view of the foregoing, by letters dated 16 October 1988, the applicant informed the four workers individually that by virtue of their continued absence from work and pursuant to s 15(2) of the Employment Act 1955, they had ceased to be employees of the applicant with effect from 16 October 1988. D

The dispute between the applicant and the respondent over the dismissal of the four workers with effect from 16 October 1988 was referred to the second respondent for adjudication by the Minister pursuant to s 26(2) of the Industrial Relations Act 1967 under cover of a letter dated 29 December 1988. It is to be noted that the Minister did not refer the E issue pertaining to the downgrading of the four workers from tappers to general workers with effect from 1 October 1988.

The Minister's reference on dismissal without just cause or excuse was registered, heard and determined by the Industrial Court which handed down the 'impugned award' to the following effect: F

(i) that the four workers be reinstated forthwith as tappers from the date of dismissal, ie 16 October 1988;

(ii) the four workers be paid their backwages, allowances, increments and all other entitlements from the date of the dismissal to the date of reinstatement; G

(iii) that the four workers be reinstated within one month of the date of the award; and

(iv) that all backwages, allowances and increments ordered be paid within one month of the date of the award.

H

Contentions of the Parties

The applicant contends that in the impugned award, the second respondent committed a number of jurisdictional errors or errors of law which entitled this court to grant the applicant an order in terms of encl 6 to quash the I impugned award.

The first respondent submitted that the second respondent had not occasioned any jurisdictional error or error of law.

A According to the applicant, the jurisdictional errors or errors of law may be summarized as follows:

(1) the second respondent went into issues which were not the subject matter of the Minister's reference;

(2) erroneous attribution of bias and prejudice to the inquiry panel;

B (3) erroneous finding that the applicant had waived or condoned the four workers' absence;

(4) erroneous conclusion that the applicant could not invoke s 15(2) of the Employment Act 1955; and

C (5) erroneous reinstatement of the four workers as tappers.

Court's Decision

Minister's Reference

D As stated above, the Minister's reference relates to dismissal as opposed to the downgrading of the four workers from rubber tappers to general workers; and the sole issue for adjudication by the second respondent should be confined to this reference only.

The impugned award referred substantially to the purportedly unlawful E decision to downgrade the four workers from rubber tappers to general workers ('the downgrading issue'). This raises the issue as to whether the second respondent had jurisdiction to consider and take into account the downgrading issue in handing down the impugned award.

In my judgment, in the absence of a reference pertaining to the F downgrading issue, the second respondent does not have jurisdiction to adjudicate upon it. The second respondent can only adjudicate upon the dispute on the 'dismissal' of the four workers on 16 October 1988 and matters incidental thereto, which constitute the subject matter of the Minister's reference ('the dismissal issue'). The second respondent lacks jurisdiction to adjudicate upon a dispute; eg, the downgrading issue which G was never the subject matter of the Minister's reference. (See OP Malhotra's *The Law of Industrial Disputes* (4th Ed) Vol 1 at pp 681–696). Any award or part thereof which is beyond the scope of the Minister's reference must be quashed: *Precision Bearings India Ltd v Baroda Mazdoor Sabha* (1978) Lab IC 515 at p 517 per the Supreme Court of India.

H Where the Minister's reference was limited to the narrow question as to whether the closure was proper and justified, the tribunal — by the very terms of the reference — had no jurisdiction to go behind the fact of closure and inquire into the question whether the business was in fact closed down by the management: *Pottery Mazdoor Panchayat v Perfect Pottery Co Ltd* (1979) 2 SCJ 481 per the Supreme Court of India. I

Within our shores, in *All Malayan Estates Staff Union v Sungai Berenang Syndicate Bhd Negeri Sembilan (Award No 151 of 1980)* [1980] MLLR 337 at p 338, the court held as follows:

The court's jurisdiction to hear a trade dispute under s 26 IRA (Industrial Relations Act) arises from the reference by the Minister under the section. The powers of the court are derived from s 30 IRA which, inter alia, reads:

(1) 'The Court shall have power in relation to a trade dispute referred to it ... to make an award ... relating to all or any of the issues.'

And s 2 IRA defines award as:

... an award made by the Court in respect of any trade dispute or matter referred to it ...

In our view, these provisions read together clearly show that it is the reference that determines the jurisdiction of the court. We must, therefore, look to the reference itself to construe the terms of reference and to determine the scope and nature of the issues referred to us.

In the present case, the Minister has referred to us a trade dispute in the appropriate form. The only issue before us is with regard to the payment of bonus. There is no mention in the reference about medical expenses. We have jurisdiction to hear the issue of bonus but no jurisdiction to hear the issue of medical expenses. For these reasons, we dismiss the claim for medical expenses.

Similarly, in the case of *SOCFIN Co Bhd (Minyak Estate, Batang Berjuntai) v National Union of Plantation Workers (Award No 226/86)* [1986] 2 ILR 1020, the court allowed an application under s 33A(1) of the Industrial Relations Act 1967 to have questions of law arising out of Award No 105/86 referred to the High Court, because the court had proceeded to consider issues which were not referred by the Minister. This award of the court was also subsequently quashed by the High Court vide certiorari proceedings taken up by the company.

In the recent case of *All Malayan Estates Staff Union v Golden Hope Plantation Bhd & Anor* [1994] 2 MLJ 699, Wan Adnan J (as he then was), in confirming the decision of the Industrial Court, held at the headnote at p 699 as follows:

(1) The jurisdiction of the Industrial Court is limited to the dispute referred to it. It has no power or authority to deal with a matter outside the reference. The reference determines the jurisdiction of the court and the scope and nature of issues referred to it. Since the Minister's reference concerned the relocation of the employees, the issue of transfer was outside the scope of the reference. Therefore, the Industrial Court had correctly confined itself to the issue of relocation.

The above decision was recently confirmed by our Federal Court in Civil Appeal No 02-635-93 vide an order dated 6 April 1995.

In *Pan Global Textile Bhd, Penang v Ang Beng Teik* [1994] 3 MLJ 808, the High Court was concerned with the issue of the Industrial Court considering and taking into account the downgrading of the respondent/claimant when the subject matter of the Minister's reference was the respondent/claimant's subsequent dismissal by the employer for refusing to turn up for work in the downgraded position. Vincent Ng J stated as follows (at p 819):

A I shall now turn to the perennial issue of the application of s 30(5) in a reference under s 20(3) of the Act. Unlike the High Court, an Industrial Court is a creature of statute; it derives its powers and jurisdiction solely from its founding statute, and its terms of reference on which it is to function, solely and exclusively from the reference made to it by the Minister. As a court of reference and to avoid falling into jurisdictional error, it should B consider only trade disputes referred to it. Though s 30(5) of the Act enjoins the Industrial Court to 'act according to equity, good conscience and substantial merits of the case without regard to technicalities and legal form', this provision can only be invoked in its adjudication of the trade dispute(s) referred to it. It should not be allowed to cure itself and in effect enlarge its jurisdiction by invoking s 30(5), otherwise it would negate the C very central principle that, as a court of reference, its jurisdiction is governed and materially circumscribed by statute, as amply postulated by a welter of case authorities.

At pp 819–820, his Lordship confirmed:

D The current case could serve as a good illustration of this interpretation of s 30(5). As the reliefs sought by a worker for constructive dismissal and dismissal are distinct and separate reliefs in an industrial dispute, they individually require specific reference by the Minister. The complaint of constructive dismissal was not before the Industrial Court as it neither could have been nor was in fact referred by the Minister. By not only taking E into consideration but, a fortiori, also making a finding and having adjudicated on the issue of constructive dismissal (couched as downgrading/demotion) of the respondent, bereft of any reference to it on this specific relief in the industrial dispute by the Minister, and indeed, by also being clearly influenced by that consideration into making its decision on the industrial dispute of dismissal (that was in fact referred), the said award has been rendered a F nullity and should be quashed (See *Anisminic Ltd v Foreign Compensation Commission* [1969] 2 AC 147, [1969] 1 All ER 208; [1969] 2 WLR 163). Thus, pithily expressed, the Industrial Court was under a duty to confine its inquiry to the basis of termination vide the letter dated 6 June 1989 but, by venturing beyond these confines, it has acted without jurisdiction and has committed errors in jurisdiction which warrants the award to be quashed; a G decision not according to law is no decision at all.

Harking back to the instant case, it must be stated that the impugned award dealt substantially with the domestic inquiry, the reasons for downgrading and the decision of the applicant to downgrade the four workers from rubber tappers to general workers with effect from 1 October H 1988, whereas the issue referred by the Minister was the dismissal of the claimant with effect from 16 October 1988.

As the issue of downgrading was never the subject matter of the Minister's reference — the impugned award which looked into the domestic inquiry proceedings and went into the issue of the lawfulness of the I downgrading with effect from 1 October 1988 — the second respondent had clearly committed a jurisdictional error, indeed an error of law which renders its decision a nullity.

Attribution of Prejudice and Bias to the Inquiry Tribunal

The second respondent found that two members of the inquiry panel were prejudiced against the four workers even before the inquiry began, solely on the ground that they had referred to the four workers as 'delinquent' in the first paragraph of their findings. Thereupon, the learned chairman came to the following conclusion:

> It is highly improper for panel members of the inquiry to assassinate the character of union officials by calling them delinquent workmen even before they inquired into the charges. It is clear that prejudice and bias had tainted and infected the minds of the two members of the inquiry panel before and throughout the inquiry, thus depriving the claimants of a fair hearing free from prejudice and bias. The charge by the inquiry panel that the four claimants were delinquents — that is to say, they were guilty of antisocial behaviour and had violated the law — are factors that operated on the minds of the inquiry panel, thus depriving the claimants of a fair, neutral, objective and unprejudiced hearing.

However, as pointed out by the learned chairman of the second respondent, the phrase 'delinquent workmen' was only used in the findings and recommendations of the inquiry panel which had found the four workers guilty of inciting and instigating workers of Ladang Simpang Rengam from going to work on 14 September 1988.

In my judgment, there is nothing wrong for the inquiry panel to refer to the four workers as delinquent workers in the findings and recommendations. This expression was not used by the inquiry panel prior to the findings and recommendations. In fact, throughout the course of the inquiry, the four workers were referred to as 'the accused'. The phrase 'delinquent workmen' only appears in the findings and recommendations.

The conclusion of the learned chairman that the inquiry panel was prejudiced and biased before and throughout the inquiry is not based on any evidence before the second respondent. Hence, the learned chairman's decision was clearly perverse and so devoid of plausible justification in that no reasonable body of persons could have reached it: *Malayan Banking Bhd v Association Of Bank Officers, Peninsular Malaysia & Anor* [1988] 3 MLJ 204.

As a matter of fact, in *Petroleum National Bhd v Mohd Radzuan bin Ramli (Award No 47/1993)* [1993] 1 ILR 100, the same learned chairman who decided the case referred to a guilty workman as 'delinquent workman'. At p 102 of the award, he held as follows:

> A misconduct owned and admitted by a delinquent workman is the antithesis of the principles of natural justice, justice or victimization as understood by industrial law.

It is improper to assume that this same learned chairman was biased and prejudiced before and throughout the course of the case before him

because he referred to the guilty workman as a 'delinquent workman'.

Applicant's Waiver or Condonation of the Four Workmen's Absence

In the impugned award, the second respondent found that the estate manager had waived the claimant's absence from 1 October 1988 to 15 October 1988, which finding was apparently based on the estate manager's testimony which was recorded as at p 167 of encl 1 as follows:

> *Waiver*
>
> *First:*
>
> The manager of the estate under cross-examination said:
>
> Q: Ex-CO5 According to CO5, you have waived absence up to 7 October 1988.
>
> A: Yes.

Further down the page, the manager's testimony was recorded as follows:

> Q: On 15 October 1988 there was a meeting at Kluang (Jabatan Buruh), a conciliation meeting.
>
> A: Yes. No settlement was reached.
>
> Q: So you issued Ex: U-1 — the termination letter — on the afternoon of 15 October 1988.
>
> A: Yes.
>
> Q: You have used s 15(2) in U-1.
>
> A: Yes.
>
> Q: You are saying they have ceased to be employed with effect from 16 October 1988.
>
> A: Yes.
>
> Q: Why did you choose 16 October 1988 in U-1?
>
> A: Because we have waived their absence from 29 September 1988, the date of the verdict of the inquiry. We have waived their absence.

From the above testimony, the learned chairman came to the inexplicable conclusion that the witness said he had waived the four workers' absence from 29 September 1988 to 15 October 1988. The learned chairman stated as follows:

> The manager having clearly in unambiguous and explicit language said the reason he issued Ex: U-1 termination letter on 16 October 1988 was because he had waived their absence from 29 September 1988 to 15 October 1988.

However, the witness did not say in his testimony that he had waived their absence 'to 15 October 1988' as suggested by the second respondent. In fact, in his testimony, the manager specifically said that he waived their absence only up to 8 October 1988 when he issued the warning letter to

them. His testimony is in fact recorded by the second respondent as follows:

> Q: Up to 15 October 1988 from 29 September 1988, you have waived their absence of the claimants. I now say, I have waived their absence from 29 September 1988 to 8 October 1988.

The second respondent had indeed ignored this testimony by holding that the manager did a 'virtual turnaround'. In my judgment, I find that there was no turnaround of the manager's testimony. The second respondent had indeed arrived at its conclusion not based on testimony of the witness but merely on an assumption which was unfounded. The second respondent further failed to take into account the applicant's letter to the four workers dated 7 October 1988 and its rejection of their application for leave vide its letter dated 8 October 1988. The evidence before the court is that, if at all there was waiver or condonation, the applicant had only waived or condoned their absence from 1 October 1988 to 7 October 1988. Their absence from 8 October 1988 was not waived or condoned and there was no evidence, oral or documentary, before the second respondent that their absence during this period was waived or condoned.

As the second respondent has based its decision on no evidence, its decision was clearly perverse: *Malayan Banking Bhd v Association of Bank Officers, Peninsular Malaysia & Anor.*

The second respondent's failure to take into account the applicant's letters dated 7 October 1988 and 8 October 1988 to the four workers, also is an error of jurisdiction amounting to an error of law which rendered its decision a nullity: *Malayan Banking Bhd v Association of Bank Officers, Peninsular Malaysia & Anor.*

Applicant's Right to Invoke s 15(2) of the Employment Act 1955

The applicant had invoked s 15(2) of the Employment Act 1955 to terminate the four workers from service.

The second respondent, however, held that the four workers had reasonable excuse to stay away from work as they were pursuing their grievance of being demoted from tappers to general workers and 'it was reasonable for them to wait for the outcome of the conciliation meeting at the Kluang Labour Office'.

In my judgment, the four workers' pursuit of a grievance on their demotion from tappers to general workers does not entitle them in law to stay away from work.

As stated earlier, the applicant and the first respondent are bound by the terms and conditions of the MAPA/NUPW collective agreement in force between the applicant and the first respondent at the material time. By virtue of s 17 of the Industrial Relations Act 1967, all workers employed in the undertaking — including the four workers in the instant case — are bound by the terms of the collective agreement. Hence, the four workers are bound by art 61 of Award 111/86 which sets out clearly the redressal procedure to invoke any grievance against the applicant.

A The four workers, in breach of their obligations in Award 111/86 failed to invoke the redressal procedure, but instead chose to stay away from work despite being warned several times that they were entitled to invoke the redressal procedure vide the applicant's letter to the four workers dated 29 September 1988 and 7 October 1988.

B The second respondent has failed to take into account a relevant fact when it failed to have regard to the fact that the four workers were required to invoke the redressal procedure and by so doing had committed a jurisdictional error. In *Kesatuan Pekerja-Pekerja Perusahaan Logam v KL George Kent (M) Bhd* [1991] 1 MLJ 230, Eusoff Chin J (now Chief Justice C of the Federal Court of Malaysia), in quashing the award of the Industrial Court held that the Industrial Court had committed a jurisdictional error in not considering the provisions of art 10.1 of the collective agreement in that case.

The second respondent further held that the four workers had a right to stay away from work pending settlement of their dispute. This proposition D of the second respondent is far-fetched as it will give rise to a licence for any employee who has a grievance with the employer to stay away from work and it will become impossible to carry on the applicant's business. In *Ex Parte Fry* [1954] 1 WLR 730, Singleton LJ held at p 735 as follows:

> The order which was given was a simple one according to the applicant, E namely that he should clean the uniform of Assistant Divisional Officer Evans. The applicant disobeyed that order ... and so the case was made the subject matter of a charge. I cannot help feeling that it was extraordinarily foolish conduct. In these days it behoves everyone to act reasonably. If every fireman or every policeman is to take it upon himself to disobey an order of this kind and to say 'I do not think it is lawful,' it will become almost F impossible to carry on any public service.

The second respondent has therefore failed to have regard to the fact that pursuit of a grievance with the applicant does not entitle the four workers to stay away from work. Hence, the second respondent committed an G error going to its jurisdiction and an error of law.

The applicant is entitled to rely on s 15(2) of the Employment Act 1955 and treat the four workers' services as having been duly terminated. Section 15(2) reads as follows:

> (2) An employee shall be deemed to have broken his contract of service H with the employer if he has been continuously absent from work for more than two consecutive working days without prior leave from his employer, unless he has a reasonable excuse for such absence and has informed or attempted to inform his employer of such excuse prior to or at the earliest opportunity during such absence.

I Both oral and documentary evidence adduced before the second respondent clearly showed that the four workers were continuously absent from work from 8 October to 15 October. Such absence was also without the permission of the applicant as the applicant had rejected the four workers' application for leave from 8 October until disposal of the dispute. The four workers did not have reasonable excuse to stay away from work. If they

wanted to dispute their demotion, they could have reported to work under protest and invoked their rights under the redressal procedure.

In the circumstances, the applicant was absolutely right in deeming that the four workers had breached their contracts of service under the provisions of s 15(2) of the Employment Act 1955 and proceeding to terminate their services: *Sykt Sistem Penerbangan Malaysia Bhd v Harbanas Singh a/l S Natha Singh (Award No 514 of 1994)*; *Malaysian Airline System (MAS) v Nahaza Ahmad bte Abdul Salam (Award No 427 of 1994)*.

The second respondent made a finding that the termination from service of the four workers under s 15(2) was in breach of the rules of natural justice. In this connection, it is necessary to make a distinction between the provisions of s 15(2) which do not provide for an enquiry, and the provisions of s 14(1) which include a requirement of 'due enquiry'. Therefore, in a termination of service under s 15(2) there is no requirement to have an enquiry as the employee is deemed to have broken his contract: *Sykt Precico Sdn Bhd, Seberang Perai v Shanmugavalli Ramadas, Seberang Prai (Award No 145 of 1989)* [1989] 1 ILR 252 at p 254; *LRC (Malaysia) Sdn Bhd v Navamani a/p Selliah (Award No 170 of 1992)* [1992] 1 ILR 494 at p 495.

In any event, the four workers were actually given a right to be heard as a domestic inquiry was in fact conducted.

Erroneous Reinstatement as Tappers

The second respondent ordered the applicant to reinstate the four workers as tappers despite the fact that at the time of their termination from service on 16 October 1988, they were occupying the downgraded position of general workers.

The ordinary, popular and natural meaning of the word 'reinstate' is 'to replace the workers to the position from which they were dismissed and to restore the status quo ante the dismissal.'

By reinstating the four workers as tappers when at the time of dismissal they were general workers, the second respondent committed a serious jurisdictional error: *Kempas (Malaya) Bhd v R Kandasamy* [1982] 2 CLJ 425; *Jackson v Fisher's Foils Ltd* [1944] 1 KB 316.

In *Sykt Kenderaan Melayu Kelantan Bhd v Transport Workers' Union* [1995] 2 MLJ 317, the Court of Appeal held, inter alia, that (at p 342):

> An inferior tribunal or other decision-making authority, whether exercising a quasi-judicial function or purely an administrative function, has no jurisdiction to commit an error of law. Henceforth, it is no longer of concern whether the error of law is jurisdictional or not.
>
> ...
>
> It follows ... that the decision of the board in *Fire Bricks* (*South East Asia Fire Bricks v Non-Metallic Mineral Products Manufacturers Employees Union & Ors* [1981] AC 363) and all those cases approved by it are no longer good law. By the same token, the cases of *Kannan* [1974] 1 MLJ 90 and *Lian Yit Engineering Works* [1974] 2 MLJ 41, though disapproved or

A overruled by the board, must not be taken to have always correctly stated the law.

Conclusion

B In the light of the serious jurisdictional errors amounting to errors of law committed by the second respondent as adumbrated above, the impugned award cannot be legally sustained. I therefore make an order in terms of this application in encl 6 with costs.

Order accordingly.

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Reported by Tey Tsun Hang

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